

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Maria Raidel et al. Art Unit 3761
Serial No.10/049,891
Filed July 8, 2002
Confirmation No. 2410
For ABSORBENT BODY FOR AN ABSORBENT ARTICLE AND METHOD OF
PRODUCING AN ABSORBENT BODY
Examiner Laura C. Hill

September 22, 2006

APPEAL BRIEF

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APPEAL BRIEF

This is an appeal from the second rejection of the claims of the above-referenced application as made in the Office action dated May 4, 2006. A Notice of Appeal was filed on August 3, 2006.

The Commissioner is hereby authorized to charge the fee for the appeal brief in the amount of \$500 to Deposit Account No. 19-1345. The Commissioner is also hereby authorized to charge any additional fees which may be required to Deposit Account No. 19-1345.

I. REAL PARTY IN INTEREST

The real party in interest in connection with the present appeal is Kimberly-Clark Worldwide, Inc. of 401 N. Lake Street, Neenah, Wisconsin 54957-0349, a corporation of the state of Delaware, owner of a 100 percent interest in the pending application.

II. RELATED APPEALS AND INTERFERENCES

Appellant is unaware of any pending appeals or interferences which may be related to, directly affect, or be directly affected by, or have a bearing on, the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 44-73, 82, and 83 are currently pending in the application. Claims 1-43 and 74-81 have been cancelled. A copy of the claims involved in this appeal appears in the Claims Appendix of this Brief.

Claims 44-48, 54, 55, 58, 82, and 83 stand rejected under 35 U.S.C. §102(b) as being anticipated by European Patent Application No. 0 687 453 (Lassen et al.).

Claims 49-53, 56, and 57 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lassen et al. in view of U.S. Patent No. 4,988,344 (Reising et al.).

Claims 59-69 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lassen et al. in view of U.S. Patent No. 5,387,210 (Murakami).

Claim 70 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Lassen et al. in view of Reising et al.

Claims 71 and 72 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lassen et al. in view of Reising et al. and further in view of U.S. Patent No. 5,897,541 (Uitenbroek).

Claim 73 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Lassen et al. in view of Murakami and further in view of Reising et al.

The rejections of claims 44, 82, and 83 are being appealed.

IV. STATUS OF AMENDMENTS

No amendments have been filed after the mailing of the Office action dated May 4, 2006.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the

following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

With reference to the present specification and drawings, claim 44 is directed to an absorbent body 5 for an absorbent article of the type worn by a wearer and having an absorbent body 5 disposed generally centrally of the article and adapted for absorbing liquid body waste released by the wearer. See Fig. 1 and page 29, lines 4-12. The absorbent body 5 has a longitudinal axis, a lateral axis, and at least one fold line 15 formed therein defining at least two segments of the absorbent body. See Figs. 4-7 and 10a-10k, page 30, lines 5-12. The at least one fold line 15 extends at least in part laterally of the absorbent body. See Figs. 4-7 and 10a-10k and page 32, line 28 through page 33, line 1. The segments are generally foldable relative to each other along the at least one fold line 15 to facilitate conformance of the absorbent article to the wearer's body. See Figs. 4-7 and 10a-10k and page 32, line 28 through page 33, line 1.

Claim 82 is directed to an absorbent body 5 for an absorbent article of the type worn by a wearer and having an absorbent body 5 disposed generally centrally of the article and adapted for absorbing liquid body waste released by the wearer. See Fig. 1 and page 29, lines 4-12. The absorbent body 5 has a plurality of fold lines 15 formed therein and defining more than two segments of the absorbent body. See Figs. 4-7 and 10a-10k, page 30, lines 5-12. The segments are generally foldable relative to each other along the fold lines 15 to facilitate conformance of the absorbent article to the wearer's body. See Figs. 4-7 and 10a-10k and page 32, line 28 through page 33, line 1. At least one fold line 15 of the plurality of fold lines extending at least in part laterally of the absorbent body, and at least one other of the plurality of fold lines extending at

least in part longitudinally of the absorbent body. See Figs. 4-7 and 10a-10k and page 32, line 28 through page 33, line 1.

VI. GROUND'S OF REJECTION TO BE REVIEWED ON APPEAL

Appellants appeal the rejections of claims 44, 82, and 83 under 35 U.S.C. §102(b) as being anticipated by European Patent Application No. 0 687 453 (Lassen et al.).

VII. ARGUMENT

A. Claims 44, 82, and 83 are unanticipated by and patentable over European Patent Application No. 0 687 453 (Lassen et al.).

Claim 44

Claim 44 is directed to an absorbent body for an absorbent article of the type worn by a wearer and having an absorbent body disposed generally centrally of the article and adapted for absorbing liquid body waste released by the wearer. The absorbent body has a longitudinal axis, a lateral axis, and at least one fold line formed therein defining at least two segments of the absorbent body. The at least one fold line extends at least in part laterally of the absorbent body. The segments are generally foldable relative to each other along the at least one fold line to facilitate conformance of the absorbent article to the wearer's body.

As shown in Figs. 1, 4, 5, 6, 7, and 10 of the present application, the various exemplary embodiments of the present invention each include fold lines 15 (e.g., predetermined lines along which the absorbent body is foldable) that have a lateral component. For example, in Fig. 4 a first set of fold lines extends entirely longitudinally and thus have no lateral

component, and a second set of fold lines extends entirely laterally of the absorbent body (and therefore extend at least in part laterally) and thus have no longitudinal component. In the embodiment of Fig. 5, each of the fold lines extends diagonally and therefore has both a longitudinal component and a lateral component (and therefore extends at least in part laterally of the absorbent body). In other words, each of the exemplary embodiments includes a fold line that extends either parallel to or coaxial with the lateral axis of the absorbent body, or extends other than parallel to the longitudinal axis of the absorbent body so as to have a lateral component (e.g. vector).

Claim 44 is unanticipated by and patentable over the references of record, and in particular European Patent Application No. 0 687 453 (Lassen et al.), because the references fail to show or suggest at least one fold line extending at least in part laterally of the absorbent body.

Lassen et al., with reference to Figs. 1-3 and 9 (as relied on by the Examiner), Lassen et al. disclose a sanitary napkin 10 having a liquid pervious cover 12, a liquid impervious baffle 14, and an absorbent core 18 disposed between the cover and the baffle. The absorbent core 18 has longitudinal centerline Y-Y and a flexure axis 24 that is "[p]ositioned along the longitudinal centerline Y-Y and substantially extending the length of the absorbent core. Column 6, lines 13-22. of the sanitary napkin 10, 100. The centrally located, longitudinally extending flexure axis 24 allows the sanitary napkin 10 to deform into an inverted "V" shape (or, where additional flexure axes Y'-Y' parallel to the longitudinal centerline Y-Y are provided as in Figs. 1 and 2, a "W" shape) when a lateral compressive force is exerted on it.

There is no teaching or suggestion anywhere by Lassen et al. that the flexure axis 24 along the longitudinal centerline Y-Y, or the parallel flexure axes Y'-Y' and Y''-Y'' could extend anything other than entirely longitudinally of the absorbent core. Indeed, in every embodiment of Lassen et al. the flexure axes 24, Y'-Y' and Y''-Y'' lie on or parallel to the longitudinal centerline Y-Y of the absorbent core, and therefore there is no lateral component to any flexure axis disclosed by Lassen et al. In fact, Lassen et al. teach against having a flexure axis that extends in part laterally of the absorbent core. As indicated in column 6, lines 42-52, the central, longitudinal flexure axis 24 directs fluid flow along the length of the absorbent core 18, which has a greater absorbent capacity, thereby reducing the likelihood of fluid flow in a transverse direction (i.e., in the direction along X-X) to thereby reduce the likelihood of body fluids causing a side failure.

Despite the express teachings of Lassen et al., the Office's position as set forth in the Office action of May 4, 2006 continues to be that the flexure axis 24 of Lassen et al. does have a lateral component to it. In particular, in the rejection of claim 44 as set forth in the last sentence on page 3 and running onto page 4, the Examiner relies solely on the following statement made at column 6, lines 22-28 as supporting the Office's position that the flexure axis 24 of Lassen et al. has a lateral component to it:

"The central longitudinal flexure axis 24 can be positioned transversely, i.e., along the X--X axis, and off center from the longitudinal centerline Y-Y, a distance ranging from about 0 to about 10 millimeters, without adversely effecting the functionality of the absorbent core 18 to adopt various body accommodating configurations."

Such a statement does not teach, nor does it even suggest, that the flexure axis 24 can extend in part laterally of the absorbent body 18 as asserted by the Office. Note in particular that the sentence refers to the "position" of the axis as being along the X--X axis and not to the direction in which the axis extends. For example, compare this to claim 44 of the present application which recites the fold line as "extending" at least in part laterally of the absorbent body. What Lassen et al. are teaching is that while in the illustrated embodiments of Lassen et al. the longitudinally extending flexure axis 24 lies along the centerline Y--Y, the longitudinally extending flexure axis need not lie right on the centerline but may instead be shifted over to a position that is laterally offset from the centerline Y--Y. However, in such an embodiment, the flexure axis 24 is still entirely longitudinal, i.e., parallel to the centerline Y--Y.

Otherwise, the absorbent core could not properly form the "V" or "W" shape taught by Lassen et al. Moreover, as noted above, Lassen et al. expressly teach against extending the flexure axis 24 laterally so as to reduce the risk of leakage from the side of the absorbent core. Thus, in Lassen et al., even though the location of the flexure axis 24 may be offset laterally from the longitudinal axis Y-Y of the absorbent core, the flexure axis still extends entirely longitudinally and therefore cannot, by any interpretation, extend at least in part laterally of the absorbent core.

To further clarify the Office's position in response to the above arguments as submitted previously by Appellants, page 2 of the Office action seeks to explain that while the flexure axis 24 of Lassen et al. extends along the longitudinal axis, it also has a component that extends across the absorbent body in a direction parallel to the transverse axis. To support this

position, the Examiner provided an annotated Figure 2 (a copy of which is attached hereto) illustrating the Office's characterization of Lassen et al.¹ In Fig. 2 of Lassen et al., the lead line from reference number 24 (the flexure axis) clearly points directly to the centerline of the absorbent core 18, which lies along the centerline Y--Y of the article 10. The Examiner, however, refers instead to the entire first member 26 of the absorbent core 18 and states (on the annotated drawing) that the "flexure axis 24 has lateral component that extends across absorbent body since axis forms a 3-D strip-like element."

This statement is erroneous for a number of reasons. First and foremost, an axis is generally taken to mean a "line" that bisects a two-dimensional body or figure, or about which a three-dimensional body or figure is symmetrical, or is used a fixed reference for determining the position of a point or series of points, as the x- or y- axis in a system of Cartesian coordinates. See Random House Webster's College Dictionary, Random House, Inc., 1995. This is precisely how the term axis is used by Lassen et al. Note, for example, the axis lines X--X, Y--Y and Z--Z in Fig. 1 of Lassen et al. These are all lines, not three dimensional elements. Indeed, an axis by its very definition cannot be a three dimensional element as proposed by the Examiner. Otherwise, the other axes that form a system of Cartesian coordinates would be absolutely meaningless. That is, if a Y--Y axis can be three-dimensional (i.e., have an X--X component), instead of a line, then how is the X--X axis to be defined? In Lassen et al. the flexure axis 24 is clearly a line that in the illustrated embodiment lies "along" the Y--Y

¹ Appellants note that the annotated Figure 2 was not provided with the Office action but was provided by Examiner Hill on July 5, 2006 via facsimile.

longitudinal centerline of the article 10 and thus cannot be three-dimensional and extend in the X--X (lateral) direction.

Second, the flexure axis 24 is described by Lassen et al. as being necessary for the absorbent core to bend upward along the flexure axis 24 to predictably acquire an inverted V shape or a W shape in the presence of longitudinal compression of the absorbent core. See column 7, line 33 through column 8, line 10. For example, as is clearly illustrated in Figs. 3 and 4 of Lassen et al., the absorbent core 18 bends right at the line defined as the flexure axis 24. There is no bending that occurs along the "3D" strip-like element 26 of Lassen et al. As such, this strip-like element cannot be considered as the flexure axis 24.

For the above reasons, Appellants submit that Lassen et al. fail altogether to teach or even suggest the absorbent body recited in claim 44 as having at least one fold line extending at least in part laterally of the absorbent body.²

Claim 44 is therefore submitted to be unanticipated by and patentable over the references of record.

Claim 83 depends directly or indirectly from claim 44 and is submitted to be unanticipated by and patentable over Lassen et al. for at least the same reasons as claim 44.

² Appellants note that the statement made in the first sentence of page 11 of Appellants' Amendment D dated January 27, 2006 inadvertently states that the disclosure of Lassen et al. "does mean" that the flexure axis 24 extends in part laterally of the absorbent body. Appellants clearly meant to state that the disclosure of Lassen et al. "does not mean" that the flexure axis 24 extends in part laterally of the absorbent body. Appellants have maintained that same position throughout prosecution, including in Amendment D (see, e.g., the last sentence of the first paragraph on page 12 of Amendment D). Had Appellants intended to agree that Lassen et al. disclose such a feature a response to the Office action would have been pointless.

Claim 83

Claim 83 depends directly from claim 44 and further recites that the at least one fold line formed in the absorbent body has both a laterally extending component and a longitudinally extending component. For example, the embodiments of Figs. 5, 6 and 7 of the present application each have fold lines wherein each fold line extends both laterally and longitudinally (e.g., diagonally as in Figs. 5 and 7 or arcuate or circular as in Fig. 6). Lassen et al., however, fail to disclose or otherwise even suggest such a feature. In particular, in every embodiment of Lassen et al. the flexure axis 24 and second flexure axes Y'-Y' extend entirely longitudinally (i.e., parallel to the longitudinal axis Y-Y). Therefore, it cannot be said that the flexure axes 24 and/or Y'-Y' extend both longitudinally and laterally so as to have a longitudinal component and a lateral component as recited in claim 83.

For these additional reasons, claim 83 is further submitted to be unanticipated by Lassen et al.

Claim 82

Claim 82 is directed to an absorbent body for an absorbent article of the type worn by a wearer and having an absorbent body disposed generally centrally of the article and adapted for absorbing liquid body waste released by the wearer. The absorbent body has a plurality of fold lines formed therein and defining more than two segments of said absorbent body, said segments being generally foldable relative to each other along said fold lines to facilitate conformance of the absorbent article to the wearer's body, at least one fold line of said plurality of fold lines extending at least in part laterally of said absorbent body, and at least one other of said plurality of

fold lines extending at least in part longitudinally of said absorbent body.

Claim 82 is submitted to be unanticipated by and patentable over Lassen et al. for at least the same reasons as set forth above with respect to claim 44. That is Lassen et al. fail to show or suggest at least one fold line extending at least in part laterally of the absorbent body.

VIII. CONCLUSION

For the reasons stated above, appellants respectfully request that the Office's rejections be reversed and that claims 44-73, 82, and 83 be allowed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard L. Bridge". The signature is fluid and cursive, with the first name "Richard" and last name "Bridge" being the most prominent parts.

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IX. CLAIMS APPENDIX

44. An absorbent body for an absorbent article of the type worn by a wearer and having an absorbent body disposed generally centrally of said article and adapted for absorbing liquid body waste released by the wearer, the absorbent body having a longitudinal axis, a lateral axis, and at least one fold line formed therein defining at least two segments of said absorbent body, said at least one fold line extending at least in part laterally of the absorbent body, said segments being generally foldable relative to each other along said at least one fold line to facilitate conformance of the absorbent article to the wearer's body.

45. An absorbent body as set forth in claim 44 wherein the absorbent body has an inner surface adapted for facing the wearer's body when the absorbent article is worn by the wearer, an outer surface adapted for facing away from the wearer's body, and a thickness, the at least one fold line having a depth which is less than the thickness of the absorbent article.

46. An absorbent body as set forth in claim 45 wherein the fold line is formed in at least one of the inner surface and the outer surface of the absorbent body.

47. An absorbent body as set forth in claim 45 wherein the fold line is formed within the absorbent body intermediate the inner surface and the outer surface thereof.

48. An absorbent body as set forth in claim 44 wherein the absorbent body has a thickness, the at least one fold line having a depth extending substantially through the entire thickness of the absorbent body.

49. An absorbent body as set forth in claim 44 wherein the absorbent body is constructed of at least two layers, the at least one fold line being formed in one of said layers.

50. An absorbent body as set forth in claim 49 wherein the at least two layers of the absorbent body include an inner layer and an outer layer, the inner layer being nearer the wearer's body than the outer layer upon wearing of the absorbent article by the wearer, the inner layer having at least one of a length and a width substantially smaller than that of the outer layer.

51. An absorbent body as set forth in claim 50 wherein the inner layer has a surface area comprising less than about 70% of a surface area of the outer layer.

52. An absorbent body as set forth in claim 50 wherein the inner layer has a surface area comprising less than about 50% of a surface area of the outer layer.

53. An absorbent body as set forth in claim 50 wherein the inner layer has a surface area comprising less than about 30% of a surface area of the outer layer.

54. An absorbent body as set forth in claim 44 wherein the absorbent body has a plurality of fold lines formed therein and defining more than two segments of said absorbent body, the plurality of fold lines including said at least one fold line extending at least in part laterally of the absorbent body, said segments being generally foldable relative to each other along said fold lines to facilitate conformance of the absorbent article to the wearer's body.

55. An absorbent body as set forth in claim 54 wherein the fold lines are arranged such that the shape of at least one of the segments formed by said fold lines is from the group consisting of square, polygonal and circular.

56. An absorbent body as set forth in claim 49 wherein the at least two layers of the absorbent body include an inner layer and an outer layer, the inner layer being nearer the wearer's body than the outer layer upon wearing of the absorbent article by the wearer, said inner layer being scored.

57. An absorbent body as set forth in claim 49 wherein the at least two layers of the absorbent body include an inner layer and an outer layer, the inner layer being nearer the wearer's body than the outer layer upon wearing of the absorbent article by the wearer, said inner layer having a shape selected from the group consisting of oval, polygon, hourglass and circle.

58. An absorbent body as set forth in claim 44 in combination with the absorbent article, said absorbent article comprising a cover layer adapted for contiguity with the wearer's skin, at least a portion of said cover layer being liquid permeable, and a backing layer in opposed relation with the cover layer, the absorbent body being disposed between the cover layer and the backing layer.

59. A combination as set forth in claim 58 wherein the absorbent article further comprises side wings arranged on

longitudinally extending, laterally spaced side edges of said absorbent article.

60. A combination as set forth in claim 59 wherein the absorbent article further comprises a wing adhesion system secured to an outer surface of each of said side wings.

61. A combination as set forth in claim 59 wherein the absorbent article further comprises an adhesive system secured to an outer surface of the backing layer of said article.

62. A combination as set forth in claim 59 wherein the absorbent body is constructed of at least two layers including a transfer layer adjacent the cover layer of the absorbent article and a distributing layer adjacent the backing layer of said article.

63. A combination as set forth in claim 59 wherein the absorbent article is selected from the group comprising a sanitary napkin and an incontinence diaper.

64. An absorbent body as set forth in claim 44 wherein said absorbent body comprises coform.

65. An absorbent body as set forth in claim 44 wherein said absorbent body comprises superabsorbent material.

66. A combination as set forth in claim 59 wherein the cover layer comprises a central portion and an edge portion extending substantially along a peripheral edge margin of said central layer.

67. A combination as set forth in claim 66 wherein the central portion and the edge portion of the cover layer are bonded together.

68. A combination as set forth in claim 67 wherein the central portion and the edge portion of the cover layer are bonded together by using a hot-melt adhesive.

69. A combination as set forth in claim 67 wherein the central portion and the edge portion of the cover layer are bonded together by welding.

70. An absorbent body as set forth in claim 49 wherein one of said at least two layers include a flow layer and a reservoir layer.

71. An absorbent body as set forth in claim 49 wherein at least one layer of said absorbent body is adapted to be differentiated visually from the remaining layers thereof.

72. An absorbent body as set forth in claim 71 wherein said at least one layer is a different color than the remaining layers of said absorbent body.

73. A combination as set forth in claim 59 wherein the absorbent body is constructed of at least two layers, the porosity of each of said cover layer and said layers of the absorbent body generally decreasing from the cover layer to the outermost layer of the absorbent body adjacent the backing layer of said article.

82. An absorbent body for an absorbent article of the type worn by a wearer and having an absorbent body disposed generally centrally of said article and adapted for absorbing liquid body waste released by the wearer, the absorbent body having a plurality of fold lines formed therein and defining more than two segments of said absorbent body, said segments being generally foldable relative to each other along said fold lines to facilitate conformance of the absorbent article to the wearer's body, at least one fold line of said plurality of fold

lines extending at least in part laterally of said absorbent body, and at least one other of said plurality of fold lines extending at least in part longitudinally of said absorbent body.

83. An absorbent body as set forth in claim 44 wherein the at least one fold line formed in the absorbent body has a laterally extending component and a longitudinally extending component.

X. EVIDENCE APPENDIX

Submitted herewith is a copy of a facsimile dated July 5, 2006 from Examiner Hill to Richard Bridge attaching an Annotated Figure 2 of European Patent Application No. 0 687 453 (Lassen et al.).



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Comments:

Attached is a copy of Lassen annotated Figure 2 referenced on page 2 of the non-final action of 10/049,891 mailed 4 May 2006 since the copy was missing in the action received by Applicant.

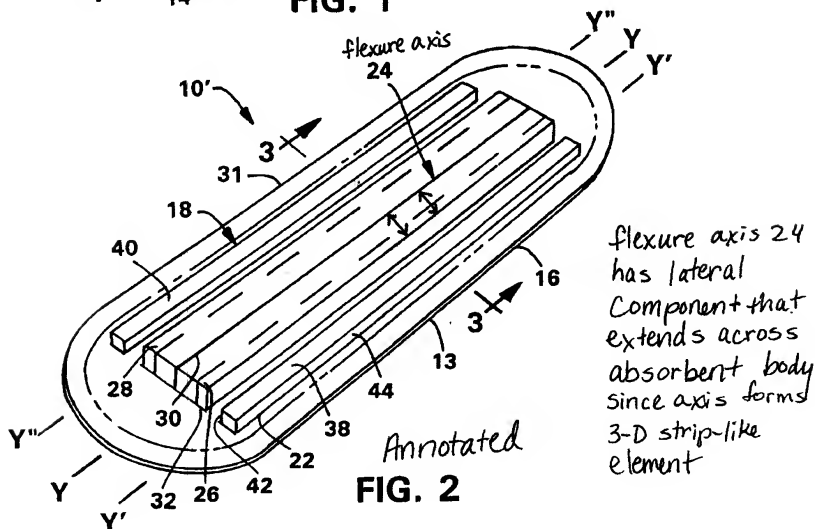
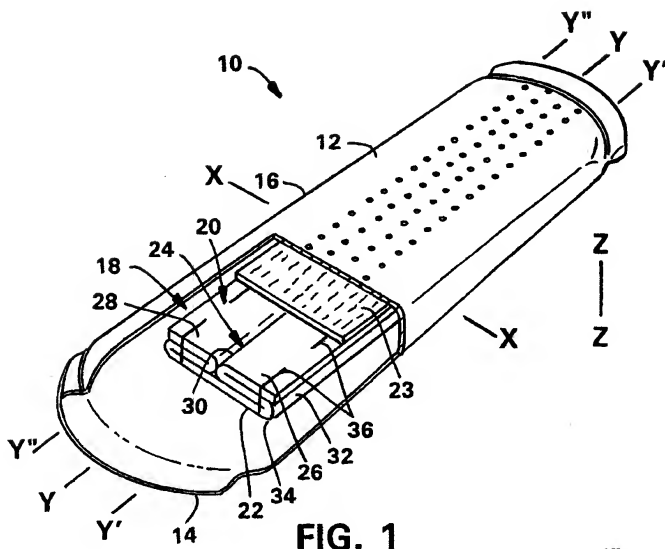
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XI. RELATED PROCEEDINGS APPENDIX

None.